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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/723,000

Filing Date: November 26, 2003

Appellant(s): SPARACINO, GINA

Kirk Hartung
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/12/06 appealing from the Office action
mailed 8/31/04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5347797	SEAL ET AL.	9-1994
4608812	WILLSON	9-1986
918212	SOLATINOW	4-1909

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,5,6,8-13,16,18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5347797 on form PTO-1449 (herein 797).

Claims 3,4,7,14,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5347797 on form PTO-1449 (herein 797) in view of US 4608812 (herein 812).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5347797 on form PTO-1449 (herein 797) in view of US 918212 (herein 212).

(10) Response to Argument

Applicant argued that “the auxiliary or second stirrup 5 of Seal is in front of the primary stirrup, as seen in Figure 6. With the rider's right foot in the front stirrup 5 of Seal, the rider must cross his/her legs in order to place their left foot in the rear primary stirrup”.

As mentioned in the remarks above, no where in the disclosure of Seal et al. states that the rider must cross his/her legs in order to place the left foot in the rear primary stirrup. It is clearly shown in figs. 6-8 that crossing over of legs does not occurred because fig. 6 shows that the right foot is stepped on the stirrup 5, which is longer than stirrup 10, and then left foot is stepped on stirrup 10 (fig. 7), and then right

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foot swings over the back of the horse. Stirrup 5 is in front of stirrup 10 so there shouldn't be any cross over as alleged by Applicant. This concept is very much similar to that of Applicant if one was to call the stirrup 5 of Seal primary stirrup and stirrup 10 being auxiliary stirrup, thus, demonstrating that there is no cross over of legs existing. Note, the Examiner is not saying that stirrup 10 is auxiliary or stirrup 5 is primary because, clearly, stirrup 10 is primary for one skill in the art to recognize. However, the Examiner is saying that there is no cross over of legs in Seal et al. and that placement of secondary stirrup 5 in the front in Seal et al. instead of in the back as claimed in the present invention is substitution of equivalent because both front or rear would perform the same function without crossing over (see remarks above).

In searching for patentable subject matter, the Examiner noted that all prior arts do not show the strap being mounted behind the seat of the saddle, thus, the Examiner relies on the specification for a critical reason why the strap had to be mounted behind the seat. However, upon reading the specification, there was not a critical reason pointed out that may distinguished it from the prior arts. All critical reasons provided in the specification were pretty much the same as the prior art, esp. US 5347797. Explanation in the specification only states general concept of usage of an auxiliary stirrup. For example, on page 1, paragraph 4, Applicant states that the auxiliary stirrup used in 797 would require a rider to cross his/her legs when mounting a horse. This is not so in the teaching of 797, for throughout 797's patent, there is no mentioned that the rider would have to cross his/her legs when mounting the horse. In contradiction, 797 shows similar mounting style as that of the present invention, i.e. right

leg on the auxiliary stirrup, left stepped on primary stirrup, swinging the right leg to mount the horse (see figs. 6-8 and col. 2, lines 60-68, col. 3, lines 1-5). Furthermore, on page 2 of the present invention, the objectives are similar to that of 797, even with the strap being mounted rearwardly, so there seems to lack a critical reason why mounting the strap rearwardly of the saddle would be better than mounting the strap in front as taught in 797. Moreover, on page 4, paragraph 3, Applicant states that by having "the foot loop 28 located below and behind the main stirrup 16, a rider can face the horse for mounting, which can be quickly and easily accomplished without a crossover step or crossing the legs", which to the Examiner, is the same as taught by 797 by mounting the foot loop ahead of the main stirrup because the rider, as shown in fig. 6, still faces the horse for mounting, which is the same as shown in fig. 3 of Applicant's invention. Therefore, it is deemed that by placing the strap in front or behind the seat of the saddle would merely be a substitution of functional equivalent whether the strap was placed in front as taught by 797 or behind as claimed by Applicant of the seat of the saddle, for both mounting styles would allow a rider to mount the horse easier.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Son T. Nguyen
Primary Examiner
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Conferees:

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